

1 WRITTEN DECISION - NOT FOR PUBLICATION

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8 UNITED STATES BANKRUPTCY COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 In re) CASE NO. 05-01860-H11
11)
12 MORTGAGE LENDING) MEMORANDUM DECISION
13 PROFESSIONALS,)
Debtor.)
_____)

14 Judgment creditor, Informa Research Services, Inc. ("Informa")
15 moved to dismiss this bankruptcy case on the grounds debtor filed
16 its petition in bad faith and requested sanctions under Federal
17 Rule Bankruptcy Procedure 9011 [hereinafter "Rule 9011"]. On July
18 12, 2005, after considering the pleadings and oral argument, the
19 Court granted Informa's motion to dismiss¹ and retained
20 jurisdiction to hear Informa's motion for Rule 9011 sanctions.²

21 At the November 4, 2005, hearing, the Court found sanctions
22 were appropriate because of numerous violations under Rule
23

24 _____
25 ¹ The Court made extensive findings regarding the debtor's bad faith filing
which will not be repeated here.

26 ² Pursuant to Rule 9011(c)(1)(A), the Court required Informa to file a
27 separate motion. Informa also requested sanctions under 28 U.S.C. section 1927 and
28 11 U.S.C. section 105. The Court found that it lacked authority to grant sanctions
under 28 U.S.C. 1927. Perroton v. Gray (In re Perroton), 958 F.2d 889, 896 (9th
Cir. 1992) (finding that bankruptcy courts are not "courts of the United States as
defined in 28 U.S.C. section 451). Because of due process concerns, the Court
reserves its right to issue an Order to Show Cause for sanctions under section 105
against the debtor's attorney, Mr. Fletscher ("Fletscher").

1 9011(b) .³ The Court took the amount of the sanctions under
2 submission and gave the parties additional time to submit briefs.⁴

3 This Court has jurisdiction to determine this matter pursuant
4 to 28 U.S.C. §§ 1334 and 157(b) (1) and General Order No. 312-D of
5 the United States District Court for the Southern District of
6 California. This is a core proceeding pursuant to 28 U.S.C.
7 § 157(b) (2) (A) .

8 I.

9 DISCUSSION

10 In its supplemental brief, Informa seeks \$30,848.68 in
11 attorneys' fees and costs, and \$9,603.16 which represents the
12 amounts owed under its judgment, plus costs and interest.⁵

13 Rule 9011(c) (2) provides that reasonable attorneys' fees may
14 be awarded as a sanction:

15 Nature of Sanctions; Limitations. A sanction
16 imposed for violation of this rule shall be
17 limited to what is sufficient to deter
18 repetition of such conduct or comparable
19 conduct by others similarly situated. Subject
20 to the limitations in subparagraphs (A) . . . ,
21 the sanction may consist of, or include,
22 directives of a nonmonetary nature, an order to
23 pay a penalty into court, or, if imposed on
24 motion and warranted for effective deterrence,
25 an order directing payment to the movant of
26 some or all of the reasonable attorneys' fees
27 and other expenses incurred as a direct result

23 ³ The Court found that the petition was filed for an improper purpose under
24 9011(b) (1) . [Transcript dated November 4, 2005 (hereinafter "Transcript") 6:13-24;
25 8:7-10]. The Court also found that the filing was frivolous in violation of
26 9011(b) (2) . [Transcript 9:6-10].

27 ⁴ Informa filed its supplemental declaration on December 1, 2005. Mr. Harris,
28 special counsel for the debtor and Mr. L'Abbe, the debtor's president, submitted
a response on December 16, 2005. Feltscher filed his declaration on December 16,
2005.

⁵ Initially, the Court notes that Informa seeks attorneys' fees and costs more
than three times the amount of its judgment.

1 of the violation.

2 (A) Monetary sanctions may not be awarded
3 against a represented party for a violation of
subdivision (b) (2).

4 "A bankruptcy court has wide discretion to determine the
5 appropriate sanction under Rule 9011." In re Rainbow Magazine,
6 Inc., 136 B.R. 545 (B.A.P. 9th Cir. 1991) (citation omitted). The
7 Ninth Circuit in Rainbow Magazine explained:

8 Rule 9011 provides that in determining the
9 appropriate sanction, a court may include an
10 order to pay to the other party or parties the
11 amount of reasonable expenses incurred because
12 of the filing of the document, including a
13 reasonable attorney's fee. The measure of
14 sanctions under this language is not the actual
fees and expenses incurred, but those that the
court determines to be reasonable. Another
factor guiding a court's discretion is that a
court should impose the least severe sanction
likely to serve Rule 11's principal
goal--deterrence.

15 "The starting point in determining an appropriate sanction
16 based upon the cost of attorneys' fees is 'the calculation of the
17 time reasonably expended in responding to the improper signing
18 which is then multiplied by a reasonable hourly rate.'" In Re
19 Cedar Tide Corp., 164 B.R. 808, 818 (E.D.N.Y. 1994) (citation
20 omitted); see also In re Express America, Inc., 132 B.R. 542, 544
21 (Bankr. W.D. Penn. 1991) (citation omitted). "The party seeking the
22 sanction must provide the Court with contemporaneous time and
23 expense records that specify, for each attorney, the date, amount
24 of time, and nature of the work performed, and must also show that
25 the fees and expenses were reasonable and necessary." In re
26 Spectee Group, Inc., 185 B.R. 146, 160 (Bankr. S.D.N.Y. 1995)
27 (citation omitted) (finding that court normally begins with the
28 lodestar amount, and may then adjust it upwards or downwards); see

1 also In re American Telecom Corp., 319 B.R. 857, 874 (Bankr. N.D.
2 Ill. 2004). "The Court need not routinely award the loadstar
3 amount, but only the portion of the attorney's fee 'thought
4 reasonable to serve the sanctioning purpose of the Rule [11].'"
5 Spectee Group, 185 B.R. at 160.

6 Informa, as the prevailing party under Rule 9011(c)(1)(A) may
7 also be awarded the reasonable expenses and attorney's fees
8 incurred in presenting or opposing the motion.

9 A. ATTORNEY FEES FOR LABOWE, LABOWE & HOFFMAN

10 Informa seeks the attorneys' fees of LaBowe, LaBowe & Hoffman
11 ("Labowe") in the amount of \$5,761.57 from March 11, 2005 through
12 September 30, 2005 for its post-petition work. The Court examines
13 the time records as submitted.

14 Labowe fails to provide the Court with the name of each
15 attorney working on the matter, their background, and their hourly
16 rate. See Spectee Group, 185 B.R. at 160. Moreover, the entries
17 are lumped and some are not sufficiently descriptive to enable the
18 Court to evaluate the reasonableness of each entry. Further,
19 although the bankruptcy petition was filed in bad faith, the issues
20 in the case were not complicated. Only two creditors were listed
21 on the petition, Informa and Labowe. The assets listed were
22 minimal.

23 The attorneys' fees and expenses must be "limited to
24 reimbursement for legal costs that are a 'direct result' of the
25 challenged paper," here the filing of the petition. American
26 Telecom Corp., 319 B.R. at 874. "[T]he award [should not] reimburse
27 the movant for legal fees that it would have incurred in spite of
28 the challenged paper." Id. (citation omitted). From the cryptic

1 descriptions offered, many of the time entries and expenses appear
2 to relate to the continuation of Informa's collection efforts with
3 respect to its judgment and, therefore, were not incurred as the
4 "direct result" of the improper filing. [See generally entries on
5 8/8/05; 8/12/05; 8/17/05; 8/29/05, 8/30/05; 8/31/05 and expenses
6 incurred on 8/9/05].

7 Based upon this Court's knowledge of the issues and in trying
8 similar matters, coupled with the inadequacy of the time records,
9 the Court finds a reduction of \$3,000 is appropriate. See In re
10 Addon Corp., 231 B.R. 385, 391 (Bankr. N.D. Ga. 1999) (citation
11 omitted) (court relied on its own experience and expertise in
12 determining hourly rates). After reviewing the tasks involved, the
13 Court finds that attorney fees of \$2,761.57 is a reasonable
14 sanction for services incurred as a result of this bad faith,
15 abusive filing. None of the costs are authorized as the Court
16 finds they are related to Informa's collection efforts and lack
17 sufficient description. The Court is satisfied that such a
18 sanction will serve as an adequate deterrent.

19 B. ATTORNEY FEES FOR GREENBERG, FIELDS & WHITCOMBE, LLP

20 Informa seeks the legal fees of Greenberg, Fields & Whitcombe,
21 LLP ("Greenberg") in the amount of \$1,377.05 who assisted Informa
22 with the motion for sanctions. [See Decl. of M. Adler ¶ 40;
23 docket #38]. Under 9011(c)(1)(A), "the court may award to the
24 party prevailing on the motion the reasonable expense and
25 attorney's fees incurred in presenting or opposing the motion."

26 Greenberg's time records show 2.0 hours of services at \$375
27 per hour and costs of \$627.05. Although the costs of \$627.05 are
28 itemized and appear reasonable, the name of the attorney performing

1 the work or his/her background is not included thereby making it
2 difficult to determine the reasonableness of the hourly fee
3 request. Moreover, the entries are not sufficiently descriptive
4 and but for Michael E. Adler's declaration, this Court could not
5 discern what Greenberg's fees related to. The Court therefore
6 reduces the hourly fee to \$200 per hour.

7 The Court awards fees in the amount of \$400, plus costs of
8 \$627.05.

9 C. LAW OFFICES OF MICHAEL E. ADLER

10 Informa requests legal fees of the Law Offices of Michael E.
11 Adler ("Adler") in the amount of \$21,060.00 from May 26, 2005
12 through November 30, 2005 for post-petition work. In addition,
13 Adler seeks costs of \$2,650.12. Adler spent 105.3 hours at a rate
14 of \$200 per hour for a total of \$21,060.00.

15 Because Adler is a recent admittee to the California Bar, the
16 Court requested additional information regarding his background.
17 The Court has reviewed the supplemental declaration of Adler and is
18 satisfied that his background warrants \$200 per hour even though he
19 is a recent admittee. However, after a review of the time records,
20 the Court finds the amount of time spent unreasonable.

21 As noted above, the issues in this case were not complicated.
22 Adler spent what looks like an inordinate amount of time
23 researching and preparing the motion to dismiss. Further, he
24 charged for his time for conferring with the Labowe firm, and the
25 Labowe firm charged for time conferring with Adler. This sort of
26 double billing is unreasonable. Adler also prepares and packages
27 the documents to file at his full hourly rate when a person at a
28 lesser billing rate could perform the same task. See In re

1 American Telecom Corp., 319 B.R. 857, 875 (Bankr. N.D. Ill. 2004)
2 (finding that a paralegal's rate of compensation is required for
3 tasks that are not strictly legal in nature).

4 With respect to the sanctions motion, which was substantially
5 already prepared as part of the motion to dismiss, Adler spent
6 another 18-20 hours. Again, he charged his full hourly rate for
7 conferring with the Greenberg firm, and they charged for that same
8 time as well. Finally, the descriptions with respect to many of
9 the time entries do not allow the Court to evaluate the
10 reasonableness of the time spent.

11 The Court finds that a reasonable number of hours for the
12 tasks performed is 10 hours for the motion to dismiss and 10 hours
13 for the sanction motion at a rate of \$200 per hour for a total of
14 \$4,000.

15 The Court also questions the reasonableness of the costs
16 requested. The charges for overnight stays at The W Hotel
17 (\$396.86), Coronado Island Marriott (\$485.04) and Marriott
18 San Diego Hotel and Marina (\$169.55), plus meals and parking are
19 unreasonable expenses. Informa could have easily hired experienced
20 local counsel to handle this matter thereby eliminating the need
21 for travel charges all together. Further, even if local counsel
22 were not involved, there was no need to stay overnight given the
23 distance involved. Evidently the distance one way is 169 miles,
24 but it would not be unreasonable for an attorney to drive that
25 distance round trip in one day. Lastly, the costs involved were
26 unreasonable given the amount of the room charges.

27 The Court finds Adler's costs associated with postage, federal
28 express, court reporting fees, mileage and copies reasonable for a

1 total of \$1,125.55.

2 The Court awards the total amount of \$5,125.55.

3 D. REQUEST FOR SANCTIONS IN THE AMOUNT OF THE JUDGMENT

4 "It is well established that a court may impose a sum that is
5 appropriate for deterrence purposes, even if it exceeds the amount
6 of the fees incurred by the opposing party." In re Deville, 280
7 B.R. 483, 498 (B.A.P. 9th Cir. 2002) (citation omitted). "A
8 monetary penalty is an appropriate sanction, and such a penalty may
9 be combined with other sanctions necessary to deter." Id.

10 (citations omitted). Informa seeks the additional amount of
11 \$9,603.16 beyond its attorneys' fees and costs. As such, this
12 additional amount would be considered a monetary penalty and Rule
13 9011(c) (2) requires that such a penalty be paid "into court." Id.

14 After considering the facts and circumstances in this case,
15 the Court finds that the sanctions awarded above will serve as an
16 adequate deterrent and, therefore, no additional monetary penalty
17 will be awarded.

18 E. WHO SHOULD THE SANCTIONS BE AGAINST?

19 The last question is which entity against whom the \$8,914.17
20 will be assessed. L'Abbe, the president of the debtor, argues that
21 Informa waived its right to seek sanctions from him because he was
22 not specifically included in the order granting the motion to
23 dismiss which stated:

24 That this Court reserves jurisdiction for a
25 period of 90 days from the date of entry of
26 dismissal for creditor Informa Research
27 Services, inc. to bring its motion for
sanctions against both Mortgage Lending
Professionals, Inc. and its counsel, Jack S.
Feltscher pursuant to Fed. R. Bankr. P. 9011.

28 The Court finds that the language in the order does not constitute

1 a waiver. The only purpose of the order was to reserve this
2 Court's jurisdiction post-dismissal for the sanction motion.
3 Further, it is within this Court's discretion not only whether to
4 award sanctions, but who they should be against. Thus, Informa did
5 not intentionally relinquish or abandon its right to sanctions, if
6 awarded, against L'Abbe. Lastly, L'Abbe had proper notice of the
7 motion for sanctions and had made a similar argument at the
8 November 4, 2005, hearing.

9 "All the signatories to a voluntary petition, including
10 bankruptcy counsel and a corporate debtor's president, subject
11 themselves to Bankruptcy Rule 9011." American Telecom, 319 B.R. at
12 875 (citations omitted); see also In re Start the Engines, Inc.,
13 219 B.R. 264, 271 (Bankr. C.D. Cal. 1998) (finding corporation's
14 attorney and president jointly and severally liable for filing
15 debtor's petition in violation of Rule 9011(b)(1)). This Court
16 made findings that the debtor filed its petition for an improper
17 purpose in violation of Rule 9011(b)(1). [Transcript 6:13-24].
18 The Court therefore imposes joint and several liability on L'Abbe
19 and Feltscher in the amount of \$7,914.17 because they are equally
20 culpable for filing the debtor's petition in violation of Rule
21 9011(b)(1). [Transcript 7:1-11; 7:16-24; 8:4-10].

22 The remainder, \$1,000, will be imposed solely on Feltscher
23 because he alone can be held responsible for violations of Rule
24 9011(b)(2). [Transcript 9:5-10].

25 The total amount of \$8,914.17 will be paid to Informa to
26 partially compensate it for the attorneys' fees and costs it
27 incurred as a result of the debtor's bankruptcy and to deter L'Abbe
28 and Feltscher and others who are similarly situated from engaging

1 in future misconduct. Included in the amount is also Informa's
2 request, as the prevailing party, for its reasonable attorneys'
3 fees and expenses under Rule 9011(c)(1).

4 III.

5 CONCLUSION

6 For the reasons noted above, the Court imposes joint and
7 several liability on L'Abbe and Feltscher in the amount
8 of \$7,914.17. The amount of \$1,000 will be imposed solely on
9 Feltscher.

10 This Memorandum Decision constitutes findings of fact and
11 conclusions of law pursuant to Federal Rule of Bankruptcy Procedure
12 7052. Counsel for Informa is directed to file with this Court an
13 order in conformance with this Memorandum Decision within ten (10)
14 days from the date of entry hereof.

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16 Dated: January 12, 2006

17 JOHN J. HARGROVE
18 UNITED STATES BANKRUPTCY JUDGE
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24 S:\Mortgage Lending II.wpd
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